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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2010-0917; FRL-9616-4]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Alaska State Implementation Plan (SIP) relating to the motor vehicle inspection and maintenance program (I/M) for control of carbon monoxide (CO) in Anchorage. The State of Alaska (the State) submitted a September 29, 2010, SIP modification that would discontinue the I/M program in Anchorage as an active control measure in the SIP and shift it to a contingency measure. EPA is approving the submittal because it satisfies the requirements of the Clean Air Act (CAA or the Act).

DATES: This action is effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R10-OAR-2010-0917. All documents in the docket are listed on the

<http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Seattle, Washington 98101. EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel, (206) 553-6121, or by email at vaupel.claudia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. Information is organized as follows:

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- I. What is the background for this final action?**

The I/M program is a CO control measure in the Anchorage CO maintenance plan that was Federally approved on June 23, 2004 (69 FR 34935). The State of Alaska submitted a September 29, 2010, SIP modification discontinuing the I/M program in Anchorage as an active control measure in the SIP and shifting it to a contingency measure. EPA is approving the 2010 submittal because it satisfies the requirements of the CAA.

In accordance with the CAA and EPA redesignation guidance, states may adjust control strategies in the maintenance plan as long as they can demonstrate that the revision will not interfere with attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), or any other CAA requirements. See CAA sections 175A and 110(l). However, section 175A(d) of the CAA requires that contingency measures in the maintenance plan include all measures in the SIP for the area before that area was redesignated to attainment.

The SIP revision submitted by Alaska included a technical analysis using EPA approved models and methods to demonstrate that the Anchorage area would continue to maintain the CO standard without the I/M program in place and that the revision would not interfere with attainment and maintenance of the other NAAQS. The submittal also documented that Anchorage will retain the legal authority necessary to implement the I/M program as a contingency measure.

On September 7, 2011, EPA proposed to approve the State's submittal as meeting the requirements of the Act (76 FR 55325). For a more detailed discussion of the background of this

rulemaking, please see EPA's notice of proposed approval. In this final action, EPA is approving the SIP modifications to the Anchorage CO maintenance plan as originally proposed in EPA's notice of proposed rulemaking.

II. What is our response to comments received on the notice of proposed rulemaking?

The public comment period for EPA's proposal to approve Alaska's request closed on October 7, 2011. EPA received 128 comments. The following summarizes the issues raised in comments and provides EPA's responses. The majority of comments supported the proposed action to remove the I/M program as an active control measure and move it to the contingency measures portion of the SIP. In general, the comments opposed to the proposed action questioned the wisdom of discontinuing a program that has a beneficial impact on the community. Finally, additional comments suggested that EPA retain the I/M program as an active control measure in the SIP because of air quality benefits received by the program. As discussed in greater detail below, EPA believes that many of these concerns fall outside of the scope of this action.

Comment: A number of commenters attributed the improvement in Anchorage's air quality to the I/M program and expressed concern that air quality in Anchorage would deteriorate once the I/M program is discontinued. Some of these commenters expressed concerns such as "smoke belcher vehicles" becoming more common and deteriorating air quality. Other commenters suggested requiring I/M for older vehicles. Two commenters provided information on I/M test failures in Anchorage. One commenter emphasized the importance of maintaining oxygen sensors. This commenter expressed concern that "the motorist may simply ignore the light

[malfunction indicator lamp/check engine light].” One commenter was concerned that the State’s analysis did not include “removal and modifications or just simple lack of maintenance” and that it did not “reflect the rapid growth of [A]nchorage.” These comments all expressed concern regarding diminished air quality in the absence of the I/M program.

Response: In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet minimum criteria set by the CAA or any applicable EPA regulations. The State’s CAA section 110(l) demonstration indicates that motor vehicle emissions are projected to decline from current levels through 2023, even with the discontinuation of the I/M program for all vehicles. In its submittal, the State explains that the analysis was conducted “[u]sing the best available data and assumptions regarding growth in population, vehicle miles traveled and trip starts” and that the modeling analysis “assumes that the CO reductions provided by the I/M Program will be zero in 2011 and beyond.” In its 2007-2023 emission projections, the State explains that “[a] great deal of effort was devoted to developing a credible highway motor vehicle emissions inventory that reflected real world conditions and driver behavior in Anchorage.” The State’s projections demonstrate that Anchorage will maintain the CO standard through 2023. The primary driver for the decline in CO emissions is the replacement over time of older vehicles with newer, cleaner running vehicles. In addition, the SIP includes a commitment to analyze air quality data to verify continued attainment of the CO NAAQS (See 69 FR 25872). Anchorage will retain the legal authority necessary to implement the I/M program if needed as a contingency measure under the CO SIP or for reasons unrelated to the requirements of the Federal CAA.

EPA notes that air quality standards are set to protect public health with an adequate margin of safety and EPA has found that approving the State's plan to remove the I/M program as an active control measure in the Anchorage CO maintenance plan will not interfere with attainment or maintenance of the NAAQS. EPA believes that the applicable criteria for approving discontinuation of the I/M program in Anchorage have been met and therefore the revision should be approved.

Comment: A number of comments, both opposing and supporting the proposed action, identified benefits of the I/M program beyond the control of CO and suggested alternatives to the I/M program. Some commenters were concerned about vehicle safety and vehicle modifications. One commenter explained seeing vehicles with "panels and hoods held together with duct tape, zipties, rivets, ratchet straps, and baleen wire." Another commenter was concerned about noise pollution from "reduced muffler quality." Some commenters suggested replacing the I/M program with a safety inspection program. One commenter was concerned about the economic impacts of discontinuing the I/M program as the industry may need to "lay off some of its work force" which will have a "ripple effect" throughout the Anchorage economy. One commenter who supported the proposal suggested that "in the spirit of clean air... [a] small increase in car registration fees... go toward enhancing the city's public transportation."

Response: EPA recognizes that there may be ancillary benefits in a community that coincide with I/M and transit programs. As noted above, states have primary responsibility for deciding how to attain and maintain the NAAQS. Under the CAA, the sole issue for EPA's consideration in this rulemaking is whether removing the I/M program as an active control measure for CO in

the SIP would be consistent with CAA provisions, including whether discontinuation is expected to interfere with attainment and maintenance of air quality standards. EPA is approving removal of the I/M program as an active control measure in the CO SIP because removal is consistent with the requirements of the CAA, including attainment and maintenance of the NAAQS. Many of the alternatives suggested by commenters may be considered and implemented at the local level without EPA's review or approval.

Comment: Two commenters suggested that discontinuation of the I/M program should be immediate and not delayed by 6 months.

Response: The commenters did not provide information identifying the 6-month period they reference. EPA has not imposed a 6-month waiting period on this SIP revision. EPA's approval of the revision to remove the I/M program as an active control measure in the SIP will be effective 30 days after the final rule is published. EPA believes the commenters may be referring to local requirements, in which case the issue is beyond the scope of this action. EPA is acting on the State's submission, which is limited in scope to revisions to the existing SIP for CO. Although Federal approval of the SIP modification is effective within 30 days, local regulators may choose to continue the I/M program after this date for reasons unrelated to Federal CAA requirements.

Comment: One commenter was concerned that the State used the MOBILE6.2 emissions model in its maintenance demonstration rather than using EPA's most recent model, MOVES2010. The commenter "calls on the EPA to require the State of Alaska to re-submit the proposed rule

change relying on MOVES2010 to model emissions in Anchorage, Alaska.” The commenter expressed concern that after March 2, 2012 (which is the end of the MOVES2010 grace period for transportation conformity analyses), future emissions modeling with MOVES2010 would cause Anchorage to be “out-of-compliance” or “in non-attainment” for the CO standard and that the I/M program could not be implemented quickly enough at that time to qualify as a contingency measure.

Response: On March 2, 2010, EPA released the MOVES2010 emission model (see 75 FR 9411, March 2, 2010) and explained that “[a]lthough MOVES2010 should be used in SIP development as expeditiously as possible, EPA also recognizes the time and effort that States have already undertaken in SIP development using MOBILE6.2. SIPs that EPA has already approved are not required to be revised solely based on existence of the new model. States that have already submitted SIPs or will submit SIPs shortly after EPA’s approval of MOVES2010 are not required to revise these SIPs simply because a new motor vehicle emissions model is now available.”¹ Alaska’s MOBILE6 modeling that was used in support of its maintenance demonstration and in developing the motor vehicle emissions budget was completed prior to March 2, 2010. Consistent with EPA’s guidance on the topic, EPA finds that Alaska’s reliance on that modeling in its SIP submission was appropriate under these circumstances. EPA concludes that this does not constitute a basis for disapproval of the State’s SIP proposal.

Regarding the commenter’s concern that Anchorage may be “out-of-compliance” or “in

¹ EPA believes that this is supported by existing EPA policies and case law [Sierra Club v. EPA, 356 F.3d. 296, 307-08 (D.C. Cir. 2004)].” (*Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes*, December 2009, EPA-420-B-09-046)

non-attainment” on March 2, 2012, EPA reiterates that SIPs that have already been approved do not need to be revised solely as a result of the availability of the new model. Thus, EPA will not be reevaluating its approval of this SIP revision after March 2, 2012.² Furthermore, to the extent the commenter is suggesting that Anchorage will be out of compliance with the NAAQS on March 2, 2012, and subsequently designated nonattainment, EPA notes that compliance with the CO standard in Anchorage will continue to be based on air quality monitoring values. The end of the MOVES2010 grace period on March 2, 2012, does not relate to the attainment status of the area.

The commenter also expressed concern that the I/M program does not qualify as a contingency measure because of the length of time it would take to implement the program after it has been discontinued. EPA notes that the contingency plan in the Anchorage CO SIP includes six contingency measures available to the State with a schedule indicating the time necessary to implement each contingency measure. The implementation times range from 6 to 24 months and the State projected it would take 12 to 24 months to reinstate the I/M program if that measure were selected. The State’s contingency plan explains that, “[i]n the event monitoring data indicate that a violation of the ambient CO standard has occurred, Anchorage would examine the data to assess the spatial extent (i.e., hot spot versus region), severity and time period of the episode as well as trends over time. Based on this information, Anchorage, in consultation with

² EPA notes that the State has subsequently submitted on September 20, 2011, another CO SIP revision for Anchorage that includes a re-analysis of the maintenance demonstration and motor vehicle emission budget with the MOVES model. For EPA's review of the whether the motor vehicle emissions budget in the SIP is adequate for conformity purposes, see <http://www.epa.gov/otaq/stateresources/transconf/currrips.htm#anch-ala>. EPA’s preliminary review of this submission indicates that Alaska’s MOVES modeling does not contain information indicating that the area may not be able to maintain the CO NAAQS throughout the maintenance period. EPA will complete its review of this latest SIP submittal and commence notice and comment rulemaking on that submittal in the near future.

ADEC [Alaska Department of Environmental Conservation], would determine which measure or measures in Table III.B.7-1 to implement.” CAA section 175A(d) of the Act requires that a maintenance plan include such contingency provisions, as EPA deems necessary, to promptly correct any violation of the standard which occurs after the redesignation of the area. Thus, Congress gave EPA discretion to evaluate and determine the contingency measures EPA “deems necessary.” EPA has long exercised this discretion in its rulemakings on CAA section 175A contingency measures in maintenance plans, allowing as contingency measures commitments to adopt and implement in lieu of fully adopted contingency measures, and finding that implementation within 18-24 months of a violation complies with the requirements of section 175A. EPA has properly determined here that the State’s contingency measures and schedules for implementation satisfy the CAA’s contingency plan requirements.

Comment: One commenter was concerned about funding for air quality monitoring. The commenter explained that air quality monitoring in the Municipality of Anchorage is funded by the I/M program and an alternate source of funding has not been identified.

Response: EPA acknowledges that a portion of Anchorage’s air quality monitoring program has historically been funded by revenue generated by the I/M program. However, Anchorage has recently passed a budget that provides funding to support continuation of its air quality monitoring program. Accordingly, EPA concludes that termination of the I/M program as an active SIP control measure will not prevent Alaska from having adequate resources to implement its SIP.

III. What action is EPA taking?

EPA is approving revisions to the Alaska SIP that will remove the I/M program as an active control measure for CO in the SIP and move it to the contingency measures portion of the SIP. For the reasons provided above and in our September 7, 2010, proposed rule, we are approving Alaska's SIP revision that removes the I/M program as an active control measure for CO in Anchorage and moves it to the contingency measures portion of the SIP as originally proposed.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 28, 2011.

Michelle L. Pirzadeh

Acting Regional Administrator

Region 10.

40 CFR part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart C – Alaska

2. Section 52.73 is amended by adding paragraph (a)(1)(ii) to read as follows:

§ 52.73 Approval of plan.

(a) * * *

(1) * * *

(ii) EPA approves as a revision to the Alaska State Implementation Plan, the Anchorage Carbon Monoxide Maintenance Plan (Volume II Sections II, III.A and III.B of the State Air Quality Control Plan adopted August 20, 2010, effective October 29, 2010, and Volume III of the Appendices adopted August 20, 2010, effective October 29, 2010) submitted by the Alaska Department of Environmental Conservation on September 29, 2010

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